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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 221

WASHINGTON PENSION UNION,

Petitioner,

vs.

THE STATE OF WASHINGTON, ON THE RELATION OF DANA T. ROBINSON

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Washington Pension Union, a corporation, intervenor in the court below and petitioner herein, prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of the State of Washington which ordered the issuance of a writ of mandate to compel respondent to pay a warrant drawn by the State Auditor on the State Treasurer in favor of relator. That judgment was entered on May 14, 1948, on which date Petition for Rehearing was denied (R. 116).

Opinion of the Court Below

The opinion of the Supreme Court of the State of Washington, along with the dissenting opinions, is reported in 130 Wash. Dec. 179. The court's opinion appears in this record at R. 54 and the dissenting opinions at R. 86 and 98. The order denying rehearing is reported in 130 Wash. Dec. 673 (R. 116).

Summary and Short Statement of Matter Involved

Petitioner Washington Pension Union (hereinafter designated as the "Pension Union") is a corporation organized and existing under the laws of the State of Washington as a social, charitable and educational society, with a membership throughout the State of Washington of approximately 16,000. Petitioner carries on a lawful business in the State of Washington as a service and information organization rendering general assistance and advice on matters of public assistance benefits and public assistance legislation (R. 11). Such information and advice is furnished not only to members of the Pension Union but also to state officials, legislators and to the public generally (R. 11).

The activities of the Pension Union necessarily and primarily consist of the exercise of speech, press, advocacy, assembly and petition on matters of public concern and for legislative and social welfare purposes (R. 11, 24). The effective exercise of these constitutional rights has been substantially facilitated by, and necessarily depend in large measure upon, the prestige of the Pension Union in the many communities of the State of Washington, the widespread reliance on the information supplied and ideas advocated by Pension Union, and the cooperation it receives from officials, legislators, individuals and organizations throughout the State of Washington (R. 11, 24, 25, 50).

This case involves the constitutionality under the due process and equal protection clauses of the Fourteenth

Amendment to the U. S. Constitution, of House Concurrent Resolution No. 10 of the 1947 legislature of the State of Washington, Laws of 1947, p. 1378 (R. 5 *et seq.*; R. 54 *et seq*), on its face and as it was construed and applied to petitioner by the Joint Legislative Fact-finding Committee on Un-American Activities in the State of Washington (hereinafter designated as the Joint Committee) which was established thereby. The constitutional questions were squarely raised by the petitioner as Intervenor in the case under review by supporting, on constitutional grounds, the refusal of the State Treasurer of the State of Washington to pay a warrant drawn to defray certain expenses incurred on behalf of the Joint Committee.

The Joint Committee was essentially empowered in vague and ambiguous terms of no specific content to investigate;

> "Groups or organizations whose activities are such as to indicate a purpose to foment internal strife, discord and dissension; infiltrate and undermine stability of our American institutions; confuse and mislead the people, and impede the normal progress of our state and nation either in a war time or peacetime economy; . . ." (R. 5, 6).

To the degree that this language has any content, it opens the door to the Joint Committee for political attacks upon individuals and organizations which happen to meet its capricious displeasure. The political and discriminatory nature of the grant of power to the Committee is indicated by the mandate "to investigate the activities of groups and organizations whose membership includes persons who are Communists . . . which activities affect the conduct of this state . . . or any political program" (R. 6).

That the above language purports to give power to "investigate" activities protected by the First and Fourteenth Amendments to the U. S. Constitution is self-evident. The

intention, moreover, is explicit in Concurrent Resolution 10. In the first "WHEREAS" clause reference is made to "persons and groups" who "under cover of the protection afforded by the bill of rights . . . seek to destroy our liberties." In the second "WHEREAS" clause there is reference to "Communist influence" in "some newspapers, books, radio and screen, some churches, schools, colleges and even fraternal orders . . . ." (R. 5).

That the constitutional and lawful activities of the Pension Union were to be the specific object of the Joint Committee's attack is evidenced by the purported authority to investigate organizations whose activities affect "unemployment relief and other forms of public assistance." The facts which follow establish that the Joint Committee construed and applied Concurrent Resolution 10 so as to interfere with, impede and obstruct the lawful and constitutionally guaranteed activities of the Pension Union with the intent to destroy the Pension Union and eliminate its influence in legislative and social welfare matters in the State of Washington.

On or about January 10, 1948, the Joint Committee announced by newspaper release throughout the State of Washington that it would:

> "1. Bring to public attention the facts gathered by the Committee's investigating staff relating to the Communist seizure and control of the state organization of the Washington Pension Union whose thousands of pension members receive virtually their sole subsistence from state tax funds.
>
> "2. Expose the pattern and purpose of the Communist conspiracy in the state and its cooperative relationship with the world-wide Communist conspiracy which seeks the destruction of the historical constitutional form of government of the United States.

"3. Expose the manner in which the Communist leadership of the union has subverted the interests and betrayed the trust of the bona fide recipients of the state pensions funds and callously duped them into giving support and assistance to Communist Russian foreign policies in conflict with and to the detriment of the United States" (R. 12).

The legislative committee then proceeded to hold public hearings in Seattle, Washington, where petitioner maintains its main office and principal place of business, and presented numerous false and defamatory statements about petitioner in accordance with its announced intentions. Petitioner was given no opportunity to reply to said statements, to cross-examine those making the statements, or in any way to elicit the truth and protect itself from the ensuing damage (R. 13).

This direct attack upon petitioner with false and defamatory charges all of which were given widespread publicity and were carried on under guise of State authority have seriously damaged petitioner in the conduct of its lawful business. Besides damaging petitioner financially and damaging its reputation, this governmental action placed an undue burden on petitioner's right to keep the public and its members informed of its activities and to obtain public support for the ideas it advocates on matters of public concern. Thus, the action of the Joint Committee constituted a direct interference with the exercise by petitioner of its constitutional rights to freedom of speech, of the press, of assembly and of social welfare action, and deprived petitioner of the equal protection of the law and of liberty and property contrary to the Fourteenth Amendment to the United States Constitution.

This proceeding was started directly in the Supreme Court of the State of Washington upon relator's application for a writ of mandamus to compel respondent State

Treasurer to pay a warrant drawn on State funds to pay relator for services rendered to the Joint Committee (R. 1). Petitioner is in reality the main party in interest in this action. The money expended for the hearings was being used to directly damage petitioner in the manner above set forth. For this reason petitioner was permitted to intervene as a party (R. 34).

The Supreme Court of the State of Washington ignored petitioner's argument that Concurrent Resolution 10 on its face and as construed and applied to petitioner, denies petitioner equal protection of the laws and deprives petitioner of liberty and property without due process in violation of the Fourteenth Amendment.

The State Supreme Court, sitting *en banc*, entered judgment that a writ of mandate should issue (R. 116) pursuant to opinion of the court (R. 54, 130 Wash. Dec. 179). The writ was issued ordering the funds to be paid by respondent (R. 113). The State Supreme Court thus upheld the validity of Concurrent Resolution 10 and of the activities of the Joint Committee in applying the Resolution to the petitioner over the objection of unconstitutionality which had been urged. Three justices dissented (R. 86 and 98). Intervenor's petition for rehearing was denied by the State Supreme Court (R. 116, 130 Wash. Dec. 673).

Jurisdiction

The Jurisdiction of this Court is invoked under section 237 (b) of the Judicial Code, as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 937 (28 U. S. C. A. sec. 344 (b)).

The validity of Concurrent Resolution 10, an act of the Washington State Legislature, on its face and as construed and applied, was drawn in question on the ground that it was repugnant to the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States. These federal questions were raised

timely and were passed upon by the Supreme Court of the State of Washington in which Court this action was instituted as an original proceeding. Petitioner intervened directly in that proceeding and was granted leave to file a brief on or before the original return date (R. 34). Petitioner's petition, the only required pleading, and brief as Intervenor were before the court below at the one and only hearing that was had on this matter. The federal questions raised herein were directly urged upon the State Supreme Court in the Brief of Intervenor (R. 43 to 53) which, because of the nature of this proceeding and petitioner's status as an Intervenor, served as well as the pleading of the Intervenor.

The denial of equal protection of the laws under the Fourteenth Amendment was specifically raised (R. 46) as was the denial of due process (R. 46, *et seq.*; R. 48 *et seq.*) and argued at length in the petitioner's brief. The petition in intervention also raised the federal questions, and alleged that House Concurrent Resolution No. 10 and the Joint Committee's action thereunder violated the Fourteenth Amendment (R. 14, 20, 21).

Intervenor's Petition for Rehearing directly urged upon the State Supreme Court that the federal questions previously raised were of merit and requested that "a more thorough consideration be given to the basic constitutional questions presented."

The judgment of the State Supreme Court and the order denying rehearing necessarily denied petitioner's claim of constitutional right. The court directly upheld the validity of the Concurrent Resolution and as it was applied in the hearings conducted by the Joint Committee. The State Supreme Court did not discuss the Federal Constitutional issues raised by petitioner. It ruled upon them adversely with the terse comment: "No other questions of substantial merit are presented" (R. 85).

Statute Involved

The act of the state legislature, the validity of which is involved, is House Concurrent Resolution No. 10 of the 1947 legislature of the State of Washington (Laws of Washington for 1947, p. 1378). The resolution is set forth verbatim in the opinion of the Washington State Supreme Court (R. 54 to 59) and in Appendix A to the petition of Intervention R. 5-9).

Questions Presented

1. Whether a state legislative committee under a vague and sweeping mandate including in its ambit the investigation of the exercise of constitutional rights of speech, press and assembly and related rights by organizations engaged in influencing public opinion on matters of public concern may without violating the due process clause of the Fourteenth Amendment publicly condemn and vilify such organizations for political reasons alone and by issuing releases to the press and holding alleged hearings at which the organizations condemned are given no notice of charges or hearing and are given no opportunity to answer and defend, and may seek to destroy the effectiveness of such organizations in advocating legislation and social action; and whether a state may, without violating the due process clause of the Fourteenth Amendment authorize the expenditure of state funds for such purpose.

2. Whether a state legislature may, without violating the equal protection of the laws clause of the Fourteenth Amendment, authorize the legislative investigation of organizations which *inter alia* "affect" . . . "unemployment relief and other forms of public assistance . . . or any political program" solely because the membership of such organizations "includes persons who are Communists"; and whether a state can constitutionally authorize the expenditure of state funds for such purpose.

Reasons Relied On for the Allowance of the Writ

The Pension Union and its 16,000 members, as has been noted, is engaged in the dissemination of information and the advocacy of legislative measures and social action in support thereof. It is of special and public importance that the members of the Pension Union and those state officials, organizations and the many individuals who co-operate with it, be assured that they may continue in such activities in free association with others who desire to do so, regardless of their political beliefs or philosophy, without being subject to public condemnation and vilification by an official agency of the state, in the form of a legislative committee. Such condemnation is necessarily fraught with danger to the Pension Union, its members and supporters, and threatens their security, livelihood and right to exercise their civil and constitutional rights without undue burden. The very democratic process is threatened when concerted action in the welfare, educational and legislative fields is restricted and when persons who participate in matters affecting their economic and social welfare may do so only on the pain of ostracism.

The decision of the Supreme Court of the State of Washington is not in accord with the applicable decisions of this Court. Concurrent Resolution 10 as construed and applied to petitioner substantially abridges freedom of speech and of the press and the dissemination and advocacy of ideas, beliefs and political programs and denies equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution. The decision conflicts with the consistent holdings of this Court. For example: *Lovell* v. *City of Griffin*, 303 U. S. 444, 58 S. Ct. 666, 82 L. Ed. 949; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 56 S. Ct. 444, 80 L. Ed. 660; *De Jonge* v. *Oregon*, 299 U. S. 353, 57 S. Ct. 255, 81 L. Ed. 278; *Bridges* v. *California*, 314 U. S. 252, 62 S. Ct. 190, 86 L. Ed. 192.

The action of the Joint Committee taken allegedly under Concurrent Resolution 10 is a direct attack upon petitioner's right to carry on its activities free from hindrance. By libeling and slandering petitioner and by condemning petitioner under the guise of state legislative action, petitioner's constitutional right of free expression of ideas, of freedom of thought, and of freedom of political activity is directly abridged.

This legislative enactment shows on its face, both in its preamble and provisions, that it aims at restricting and suppressing political activity and the free dissemination and advocacy of ideas by those out of favor with the legislature. The very purpose of the constitutional guarantees of these liberties is to protect dissident opinion from attack by those who happen to be in power. The legislature states that "these are times of public danger." It is in such times that extra vigilance is needed to protect our sacred rights. *De Jonge* v. *Oregon*, 299 U. S. 353, 57 S. Ct. 255, 81 L. Ed. 278.

The legislative enactment is clearly aimed at intimidating, discouraging and suppressing the expression of certain ideas. The first WHEREAS clause by its recitation of public danger and by mentioning subversive persons and groups indicates the aim to suppress and the intended appeal to public passion and prejudice. The clause then proceeds to say that these persons and groups are "seeking to destroy our liberties," under cover "of the protection afforded by the bill of rights." The implication is clear that the authorized investigation cast aside or ignored this protection. The second WHEREAS clause makes it clear that it is an alleged Communist "influence," which is to be suppressed or eliminated. Explicitly the dissemination of ideas is the object of the proposed suppression. The "propaganda" of the Communists and the Communist "influence" in "newspapers, books, radios and on the screen, some churches,

schools, colleges and even fraternal orders" are the apparent targets of the legislation as set forth on its face.

That such expression of ideas by a legal political party is not a proper subject for restrictive legislation is so clear that it almost needs no citation of authority. The authorities cited with more specific application hereafter all bear out this fundamental general proposition. But it would be wholly unrealistic to conclude that the Communist Party and its members are the sole or even the principal objective. The un-American legislative investigating committees, national and state, have indicated that in their use of the words "subversive," "un-American" or "Communist," they include all those who advocate changes in the *status quo* in the direction generally regarded as progressive, no matter how limited the objective or how peaceful the course pursued. It matters not whether it be the repeal of the poll tax, a law against lynching, public housing, price control which is advocated, or more effective public assistance as the petitioner advocates.

Clearly the legislature could not make illegal by a blanket enactment the expression of ideas, which is the aim of the investigation authorized by Concurrent Resolution 10. The legislature in this case has merely selected a more devious means of suppression, but one equally as effective as a direct prohibitory statute, if not more so. By this method, no opportunity to defend is given.

The public announcement of the Joint Committee, which heralded the attack upon petitioner (R. 12), shows how the Pension Union as a target of the Committee's inquiry was even before hearing, publicly branded as engaged in a criminal conspiracy which seeks nothing less than the destruction of the government itself.

Can there be any doubt of the effectiveness of this unverified public barrage, in destroying the activities of the Pension Union and of the public confidence which it has

engendered over many years. Yet an organization becomes the helpless victim of this state action merely if in the opinion of the members of the Joint Committee it is deemed to "infiltrate and undermine the stability of our American institutions"; or if it is suspected that it is seeking to "confuse and mislead the people" (whatever these expressions mean), or if it has Communists in its membership.

A program of public vilification and condemnation when carried on by the authority of the state legislature is a most effective means by which a State can suppress and stifle the expression of dissident opinions or political activity which opposes those in power. Particularly is this true when such activity is linked with a minority party which has been subject to repeated attacks. An individual or group which continues to express such dissident views or to engage in such political activity is faced with the inevitable result of suffering public disrepute. This means the loss of prestige and standing, injury to business and social relationships and often the loss of property and the means of livelihood —all without redress unless appropriate action is taken by this Court.

In a line of cases from *Kilbourn* v. *Thompson*, 103 U. S. 168 (1880) to *Jones* v. *Securities Commission*, 298 U. S. 1 (1935), this Court has held that governmental inquiry into thought and expression constitutes official action, as burdensome as direct prohibition (see, particularly, *Sinclair* v. *United States*, 279 U. S. 263 (1928) and *United States* v. *Ballard*, 322 U. S. 78, 1944). Governmental inquiry into speech and governmental classification of speech are themselves abridgments of speech (*United States* v. *Ballard*, 322 U. S. 78 (1944); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Thomas* v. *Collins*, 323 U. S. 516 (1945)).

Otherwise there would be a premium on the indirect, though real and substantial, state legislative encroachment

on constitutional rights. Direct prohibition of rights granted by the Constitution has been struck down by this Court. Shall this Court allow abridgment of constitutional rights merely because there has been no formal judgment and because a state legislative committee, run wild, has succeeded in curtailing such rights without benefit of due process to the person affected, with no formal finding or judgment, with no opportunity to defend or to appeal through statutory channels? Such sanction means in practical effect an end to government by law, based on and limited by the Constitution. It means a government of men, using political animus and caprice as the standards of condemnation. It means real though informal punishment. It means also the end of free discussion on vital matters which determine the course of our economy and the welfare of the people.

The applicable decisions of this Court do not allow such conclusion. (See cases cited, *supra.* Also, *West Virginia State Board of Education* v. *Burnette,* 317 U. S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628; *De Jonge* v. *Oregon, supra; Martin* v. *Struthers,* 319 U. S. 141, 63 S. Ct. 862, 87 L. Ed. 1313; *Thornhill* v. *Alabama,* 310 U. S. 141, 63 S. Ct. 862, 84 L. Ed. 1093; *Bridges* v. *California, supra.*)

The Washington Supreme Court decided, in effect, though not expressly that legislative authority granted to investigate an organization merely because "its membership included persons who are Communist," while organizations with similar objectives which did not have Communists in membership were immune from such investigation did not violate the equal protection of the laws clause of the Fourteenth Amendment. This discrimination against an organization because of the political views of some of its members is probably contrary to the applicable decisions of this Court and cannot be constitutionally sustained. *Barbier* v. *Connolly,* 113 U. S. 27, 32; *Yick Wo* v.

Hopkins, 118 U. S. 356, 369; *Truax* v. *Corrigan,* 25 U. S. 312, 331; *Gaines* v. *Canada,* 305 U. S. 337, 350; *Skinner* v. *Oklahoma,* 316 U. S. 535, 537.

The Communist Party is a legal political party in the State of Washington. *State ex rel. Huff* v. *Reeves,* 5 Wn. (2d) 637. This was one of the determining factors in holding that the dissemination of Communist ideas could not be illegalized by a state. *Herndon* v. *Lowry,* 301 U. S. 242, 57 S. Ct. 732, 81 L. Ed. 1066. See also *De Jonge* v. *Oregon, supra*; *cf. State ex rel. Communist Party of the U. S.* v. *Peek,* 20 Cal. (2d) 536, 127 P. (2d) 889.

The law is well settled that an act establishing a legislative committee must provide a legitimate legislative objective for the committee to pursue and that an attempt by the legislature to establish a committee to go beyond legitimate legislative purposes is void. *Kilbourn* v. *Thompson,* 103 U. S. 168, 26 L. Ed. 377; *Ex parte Caldwell,* 138 Fed. 487.

It is clear that the attack upon petitioner could serve no legislative purpose and was not intended to do so. The attack was political as the resolution which authorized it intended it to be. It is apparent also that by honoring the warrant of the State Auditor the Supreme Court of Washington was putting its sanction on the political witch hunt of which the Pension Union was the victim. In this connection it should be noted that the judgment of the Washington Supreme Court made possible the continued unconstitutional activity of the Joint Committee—money to operate is its life blood. The petitioner was the direct victim of the expenditure of state funds. Hence the Washington Supreme Court recognized the right of the Pension Union to intervene. Granted this intervention recognizing that the Washington Pension Union was the real party at interest, that Court was bound to protect the rights guaranteed to the Pension Union under the Fourteenth Amendment from encroachment by the Joint Committee.

This Court has not heretofore determined the limit which the United States Constitution imposes upon the action of state legislatures in authorizing legislative committees to conduct investigations largely, if not exclusively, in the field protected by the First Amendment, and by the Fourteenth Amendment; nor has this Court determined the constitutional limit upon the action of such committees to condemn and vilify organizations, solely for political reasons, by the publication of defamatory material, through press releases or hearings held without notice, or opportunity to be heard and defend by the organization attacked.

Conclusion

The Writ of Certiorari should be granted.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1948

WASHINGTON PENSION UNION,
Petitioner,

vs.

THE STATE OF WASHINGTON, on the Relation of Dana T. Robinson,
Respondent.

No. 221

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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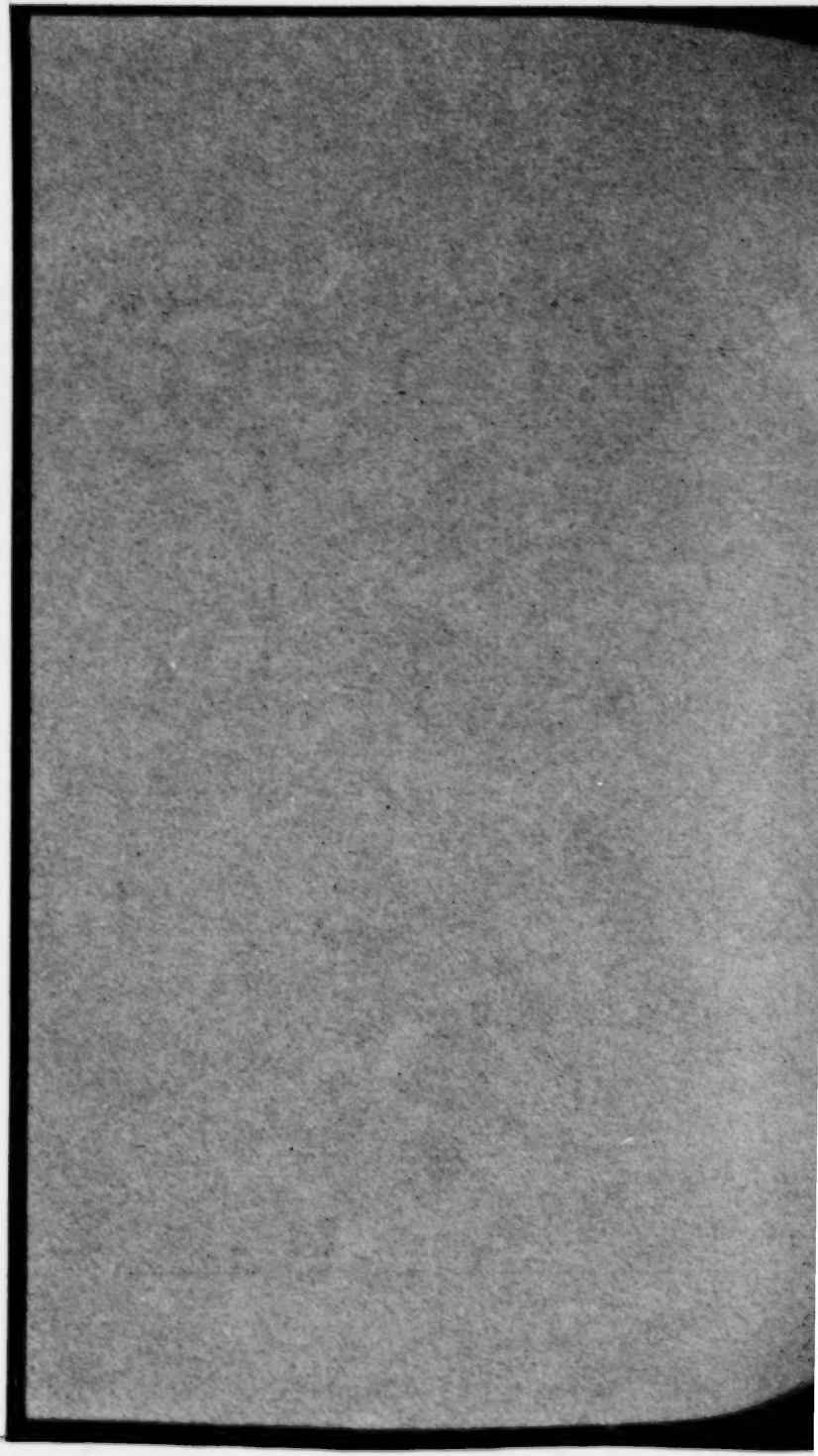

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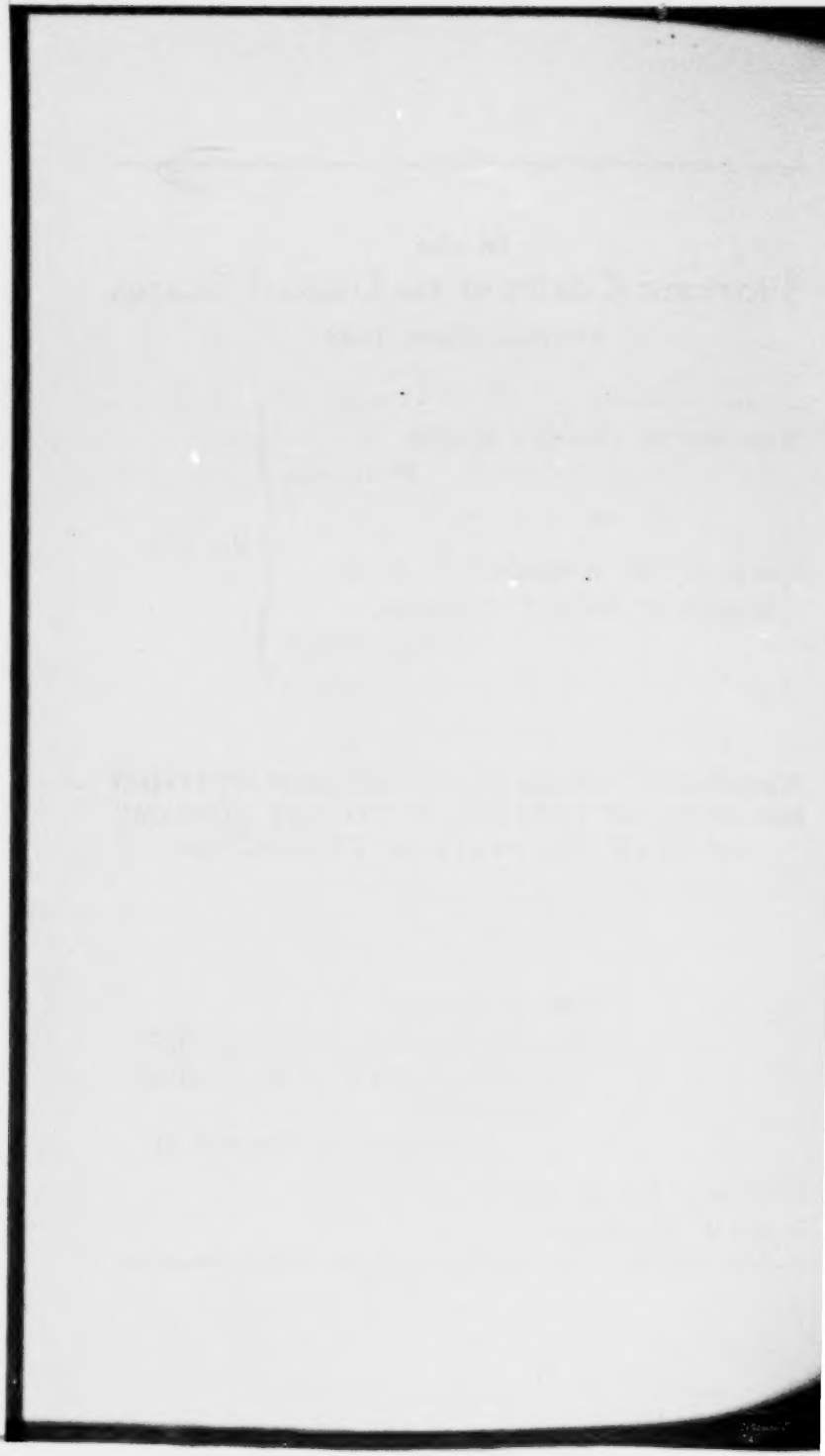

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OCTOBER TERM, 1948

WASHINGTON PENSION UNION, *Petitioner,* vs. THE STATE OF WASHINGTON, on the Relation of Dana T. Robinson, *Respondent.*	No. 221

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Comes now the Respondent, The State of Washington on the Relation of Dana T. Robinson, and prays the Court that the Writ of Certiorari sought by the Petitioner herein be denied, and submits this Brief in opposition to the Petition for said Writ.

OPINION OF THE COURT BELOW

The opinion of the Supreme Court of the State of Washington is reported in 130 Wash. Dec. 179 and 191 P.(2d) 241, and appears in the Record filed herein by Petitioner at R. 54, *et seq.*

The Order Denying Petition for Rehearing is reported in 130 Wash. Dec. 673, 191 P.(2d) 241 (R. 116).

STATEMENT OF THE CASE

This litigation is an action initiated in the Supreme Court of the State of Washington, seeking a Writ of Mandamus to compel the Respondent below, Russell H. Fluent, Treasurer of the State of Washington, to honor and pay a warrant drawn by the State Auditor on the said State Treasurer in payment of compensation of the Relator below, Dana T. Robinson, for services rendered as an employee of the Joint Legislative Fact-finding Committe of the Legislature of the State of Washington. The Relator's right to collect upon said warrant was challenged by the said State Treasurer and, following a hearing before the Supreme Court of the State of Washington, a Writ of Mandamus was issued requiring that the warrant be paid. During the pendency of the cause in the State Supreme Court, the Petitioner here, Washington Pension Union, sought and was granted leave to intervene in the proceedings and did so by filing in said Court a petition in intervention (R. 11), a brief in support thereof (see excerpts, R. 43) and, through counsel, participated in presentation of the case on argument.

The case was decided, a Writ of Mandamus issued (R. 112) and thereupon said Writ was, by the respondent State Treasurer, fully obeyed.

The Petitioner here (intervener below) thereupon filed a Petition for Rehearing in the State Court (see excerpts, R. 114) which was by the Court denied (R. 116).

The Intervener, in its Petition in Intervention, (R. 11) set out that it was a Washington corporation, engaged as a service and information organization to assist and advise the public generally and various persons, particularly enumerated, including public officials; That the 30th regular Session of the Legislature of the State of Washington had created a Joint Legislative Fact-Finding Committee on Un-American Activities; That this Committee had made a certain public announcement relative to an investigation of Intervener and its relationship to Communists; that a hearing had been held at which certain witnesses had made statements regarding Intervener which were published; that Intervener had no opportunity to cross-examine witnesses and was damaged by the publicity. Said Petition in Intervention further stated that Intervener had commenced theretofore an action in the appropriate Washington State Court against the members of said Committee alleging that Intervener was and would be damaged by the activities of the Committee and seeking to enjoin said Committee from following a certain course of conduct and to recover damages, which action is still pending; that a restraining order which had been issued by the Court in which said action was pending, had been dissolved. Intervener further alleged that if the bills incurred by the said Committee were to be paid it would continue to function and that, by reason thereof, Intervener had an interest in the action, and said Petition in Intervention concluded with a general allegation that the Committee is not a lawful committee of the Legislature of the State of Washington

and that no appropriation of funds had been made for said committee or for the payment of the Warrant upon which the application for a Writ of Mandate was predicated. It was prayed by the Intervener that the Mandamus procedings be dismissed.

No affirmative relief was sought by the Intervener. No Federal question was raised by said pleading in intervention.

In determining the Relator's right to compel payment of his warrant, it was necessary for the State Supreme Court to determine first, whether the Legislative Committee was created by the Legislature in a proper manner, that is, whether the State Legislature could, under the Constitution of the State of Washington, create an "Interim" Committee by joint resolution of the two houses composing said Legislature, and, second, whether funds had been appropriated for the purpose of paying the expenses of the Committee.

The Supreme Court of the State of Washington upheld the method of creating the Committee, and held that funds were available for the payment of the warrant, and accordingly, the Writ of Mandate applied for by Relator was issued (R. 112). No other question was passed upon. The state court, in its opinion, concluded, "No other questions of substantial merit are presented" (R. 85).

The Joint Resolution No. 10, under which the committee was created and functions (R. 5), among other things, provides:

"Whereas, These are times of public danger;

subversive persons and groups are endangering our domestic unity, so as to leave us unprepared to meet aggression, and under cover of the protection afforded by the bill of rights these persons and groups seek to destroy our liberties and our freedom by force, threats and sabotage, and to subject us to the domination of foreign powers; and

"Whereas, Recent announcements by responsible officers of the Federal government indicate the seriousness of the problem. J. Edgar Hoover, Director of the Federal Bureau of Investigation recently said: 'During the past five years American Communists have made their deepest inroads upon our national life. Their propaganda, skillfully designed and adroitly executed has been projected into practically every phase of our national life. The Communist influence has projected itself into some newspapers, books, radio and the screen, some churches, schools, colleges and even fraternal orders have been penetrated, not with the approval of the rank and file, but in spite of them'; and

"WHEREAS, State Legislation to meet the problem and to assist law enforcement officers can best be based on a thorough and impartial investigation by a competent and active legislative committee;

"NOW, THEREFORE, Be It Resolved, That there is hereby created a Joint Legislative Fact-finding Committee on Un-American Activities in the State of Washington which shall investigate, ascertain, collate and appraise all facts concerning individuals, groups or organizations whose activities are such as to indicate a purpose to foment internal strife, discord and dissension;

infiltrate and undermine the stability of our American institutions; confuse and mislead (fol. 7) the people, and impede the normal progress of our state and nation either in a war time or a peace time economy; and

"Be it further resolved, That in addition to other duties imposed upon the Committee, the Committee shall investigate the activities of groups and organizations whose membership includes persons who are Communists, or any other organization known or suspected to be dominated or controlled by a foreign power, which activities affect the conduct of this state, the functioning of any state agency, unemployment relief and other forms of public assistance, educational institutions of this state supported in whole or in part by state funds, or any political program;

* * * *

"(1) To employ and fix the compensation of a secretary and such clerical, legal, expert and technical assistants as it may deem necessary, and to lease, rent or buy such supplies and facilities as may be required;

* * * *

"(5) To hold public hearings at any place in the State of Washington at which hearings the people are to have an opportunity to present their views to the committee;

"(6) To make a complete study, survey and investigation of every phase of the subject of this resolution, including but not limited to the operation, effect, administration, enforcement, and needed revision of any and all laws in anywise bearing upon or relating to the subject of this resolution;

"To meet at any and all places in this state, in public or executive session;

"To act during this session of the legislature, including any recess, hereof, and after final adjournment hereof until commencement of the thirty-first legislature.

"To file a report with the thirty-first legislature."

Attorneys for Petitioner in the state court, Respondent here, were special assistants attorney general of the State of Washington appointed pursuant to Rem. Rev. Stat. §11034-3 which is set forth in Appendix "A" attached hereto.

It is to be noted that Respondent State Treasurer did not seek a re-hearing in the State Court and has not applied for a review in this Court, but has complied with the Writ of Mandamus issued by the State Supreme Court and has paid the warrant in question in full. (See Affidavit of Dana T. Robinson appended hereto as Appendix "B" and made a part of this Brief.)

ARGUMENT

SUMMARY OF ARGUMENT

The Petition for a Writ of Certiorari should be denied for the following reasons:

1. No substantial Federal constitutional question is raised.

2. The purported Federal question was not properly and timely raised in the State court.

3. Petitioner has no capacity to sue and is not only not the real party in interest but has no legal, jus-

ticiable interest in this action sufficient to give this Court jurisdiction.

4. The decision of the State Court turned entirely upon state and local law, and it was not necessary to consider or pass upon any Federal question to determine the action, the purported Federal question suggested by Intervener being immaterial and unsubstantial. The actions and conduct of the Legislative Fact-finding Committee were not in issue in the present proceedings and constitute an issue in another action now pending to which Intervener (petitioner here) is a party (R. 16).

5. The case has become a *moot* case because the warrant, payment of which was sought to be compelled, has been paid in full by the Respondent State Treasurer, and there is now no actual controversy involving real and substantial rights between the parties to the record and no subject matter upon which the judgment of this Court can operate. Any opinion of this Court would be advisory only.

6. Neither the decision of the Supreme Court of the State of Washington nor House Concurrent Resolution No. 10, creating the Legislative Committee, nor any action of said Committee has, or will, deprive Petitioner here of any constitutional right.

7. The facts in this case are not within the statute relative to the issuance of a Writ of Certiorari by this Court to a State Court (Sec. 237-b of the Judicial Code, as amended by Act of February 13, 1925, Ch. 229, Sec. 1; 28 U.S.C.A., 344-b). No statute or Constitutional right is involved.

ARGUMENT

No substantial Federal question is raised by the Petitioner. Petitioner contends that the House Concurrent Resolution No. 10 of the Legislature of the State of Washington (R. 5) on its face and as applied is repugnant to the equal protection and due process clauses of the 14th Amendment to the Constitution of the United States. It then contends (Petitioner's Brief pp. 10-14) that because the Legislative Committee's attention, among other things, is directed to the activity of *Communists*, Petitioner is deprived of some vague right or privilege. This argument must be based upon the assumption that Petitioner is a Communist organization, or has some relation to the Communist Party that cannot be disclosed without in some way injuring Petitioner. The most that Petitioner can contend for itself (aside from its argument on behalf of the Communists who do not appear as parties to the record) is that at hearings held, and which may be held by the Committee, its reputation has been or may be in some way damaged by the testimony of various witnesses before the Committee. Respondent does not concede that such a possibility constitutes a deprivation of constitutional freedom. Certainly the payment of the state warrant, which is the sole and only subject matter of the present litigation, did not operate directly or indirectly to deprive Petitioner of anything or affect Petitioner in any way. The actions or conduct of the Legislative Committee, which is the Relator's employer, the nature of its inquiries, the testimony had upon its hearings, the

good, bad, or indifferent manner in which the members of the legislative committee carried out their public duties, were in no way before the State court or passed upon, nor did Petitioner itself, in its Petition in Intervention, (R. 11) seek to enjoin or bar the Committee from doing any act. On the contrary, the Petition in Intervention did not even mention as an issue the constitutional rights of which Petitioner now asserts it is being deprived.

Before this Court will take jurisdiction, the Federal question raised must be substantial and it must appear that the Petitioner has a right guaranteed by the Constitution of the United States which will suffer by the decision of the State court.

Tyler v. Judges of Court of Registration, 179 U. S. 405, 45 L. ed. 252, 21 S. Ct. 206, where the court stated, at p. 407:

> "In order that the validity of a state statute may be 'drawn in question' under the second clause of section 709, Rev. Stat., it must appear that the plaintiff in error has a right to draw it in question by reason of an interest in the litigation which has suffered, or may suffer, by the decision of the state court in favor of the validity of the statute."

See:

Alabama State Federation of Labor v. McAdory, 325 U. S. 450, 89 L. ed. 1725. 65 S. Ct. 1384;

C.I.O. v. McAdory, 325 U. S. 472, 89 L. ed. 1741, 65 S. Ct. 1395;

Asbury Hospital v. Cass County, 326 U. S. 207, 90 L. ed. 6, 66 S. Ct. 61;

Seaboard Air Line Ry. v. Watson, 287 U. S. 86, 77 L. ed. 180, 53 S. Ct. 32.

The fact that the record may present in form only a Federal question is not enough to warrant taking jurisdiction.

Deming v. Carlisle Packing Co., 226 U.S. 102, 57 L. ed. 140, 33 S. Ct. 80.

In that case the purported Federal question was held to be frivolous and interposed for the purpose of delay, and damages were allowed the Respondents.

There must be a justiciable case or controversy. No abstract, hypothetical or contingent question will be passed upon.

Alabama State Federation of Labor, v. McAdory, supra;

Asbury Hospital v. Cass County, supra.

In the latter case, at p. 213 (p. 13 of 90 L. ed.), the court said:

> "This court is without power to give advisory opinions. It will not decide constitutional issues which are hypothetical, or in advance of the necessity for deciding them, or without reference to the manner in which the statute, whose constitutional validity is drawn in question, is to be applied."

This court has stated many times that it will exercise extreme caution in determining whether to invalidate the actions of a state and will not lightly assume facts which would render them invalid. *Asbury Hospital v. Cass County, supra*, where, at p. 215 (p. 13, 90 L. ed.) the court states:

> "Statutory discrimination between classes

> which are in fact different must be presumed to be relevant to a permissible legislative purpose, and will not be deemed to be a denial of equal protection if any state of facts could be conceived which would support it."

See also:

> *Alabama State Federation of Labor v. McAdory, supra,*

where at p. 465 (p. 1737, 89 L. ed.), it is stated as follows:

> "When a statute is assailed as unconstitutional, we are bound to assume the existence of any state of facts which would sustain the statute in whole or in part. * * * "

The refusal to permit an action for damages for libel contained in a privileged publication or communication raises no Federal question.

> *Abbott v. Tacoma Bank of Commerce*, 175 U. S. 409, 44 L. ed. 217, 20 S. Ct. 153.

Whether the requirements of the State Constitution were met is a local question. *Carfer v. Caldwell*, 200 U. S. 293, 50 L. ed. 488, 26 S. Ct. 264.

See also:

> *Smith v. Jennings*, 206 U. S. 276, 51 L. ed. 1061, 27 S. Ct. 610.

where this court said, at p. 278:

> "But the conformity with the state constitution of the proceedings in the enactment of the law is a question for the determination of the state court, and its judgment is final. * * * "

> *Welch v. Swasey*, 214 U.S. 91 (p. 104), 53 L. ed. 923, 29 S. Ct. 567.

where it is said:

> "We do not understand that the plaintiff in error makes the objection of illegality arising from an alleged delegation of legislative power to the commissions provided for by the statutes. At all events, it does not raise a Federal question. The state court holds that kind of legislation to be valid under the state constition and this court will follow its determination upon that question."

In determining the existence or non-existence of a Federal question, it must be borne in mind, and we reiterate: The actions or conduct of the Committee are not an issue in the case.

As long as some proper purpose is included in the resolution creating the Committee, the fact that the subject investigated or to be investigated is one which *might* result in invalid legislation is no reason to strike down the considered actions of a state legislature. No statute is here in question. The Committee is merely an investigating body seeking facts for the use of the coming Legislature of the State of Washington. Whether actual legislation results from the activities of the Committee, and the nature and provisions of such legislation, are to be determined by the Legislature as a whole when next it convenes. In the meantime it must learn facts and be educated to act intelligently. The Petitioner here seeks to prevent anyone from talking about it and thus to restrict the activities of others, including the State of Washington, in the exercise of the very freedom of speech Petitioner purports to preserve.

The resolution creating the Legislative Committee nowhere singles out the Washington Pension Union

or mentions it. If the Committee improperly exceeds its powers, Petitioner is free to seek whatever remedy it deems appropriate. In the meantime the Legislature of the State should not be frustrated in making legitimate and necessary inquires, which function is a legitimate part of and inherent in the legislative power.

The purported Federal question was not properly and timely raised. The manner in which the purported Federal question was raised by Petitioner is of interest. As we pointed out, the petition in intervention (R. 11) nowhere purported to raise a Federal question. In this pleading, Intervenor, Petitioner here, raised the question of the legality of the method of creation of the Committee and asserted lack of appropriation of funds with which to pay the Committee's expenses. In Petitioner's brief some reference was made to the Constitution of the United States (see excerpts R. 43, *et seq.*). However, in its petition in intervention Petitioner did not seek to assert Federal rights or assert any right whatever or seek the enforcement or protection of any such right. Intervener contented itself with alleging that it had pending another action asserting its rights. That other action (see R. 16, *et seq.*) is the one where the question, if any, is directly in issue and must be determined. It is not enough to raise a purported Federal question only incidentally and for the purpose of a prospective appeal to this Court. It (the question) must be seriously advanced and constitute a bone of contention between the parties.

East Tennessee, etc. Ry v. Frazier, 139 U.S. 288, 35 L. ed. 196, 11 S. Ct. 517.

A vague contention, as in the present case, will not give jurisdiction.

Seaboard Airline Ry. v. Watson, 287 U.S. 86, 77 L. ed. 180, 53 S. Ct. 32.

Again, assuming there is a Federal question that might be raised in this matter, how can this Petitioner raise it? What is its interest? This is simply an action to recover money on a warrant issued to a state employee. The sole question ultimately to be determined is whether or not the State Treasurer may be required to pay the warrant. Assume that the Petitioner may in some way have an interest in the continuance or cessation of the activities of the Legislative Committee. Further assume that it may be entitled to sue for damages to its reputation (it has done so). Assume it might, through its members, decline to appear and respond to inquiries by the Committee or to produce corporate records. Assume it might bring proceedings to enjoin the Committee from functioning (it has attempted to do so in another proceeding). Where is Petitioner's interest in the case at bar? It has no interest in the warrant; it does not show itself to be a taxpayer; its funds are not being spent; it has no legal or justiciable interest in the controversy which is the subject matter of the case at bar. It is a mere onlooker who was permitted by the State Court to appear before it in the case because the decision in the case at bar might be considered as of some force as a precedent in the

other and completely different litigation then and now pending, in which Petitioner is directly interested. Petitioner's legitimate status in this case is no greater than that of any *amicus curiae*. It not only lacks capacity to sue, but its status is such that the purported Federal question cannot be raised by it in this Court.

Braxton County Court v. West Virginia, 208 U.S. 192, 52 L. ed. 450, 28 S. Ct. 275.

where it is said, p. 197:

> "Again, that the act of the State is charged to be in violation of the National Constitution, and that the charge is not frivolous, does not always give this court jurisdiction to review the judgment of a state court. The party raising the question of constitutionality and invoking our jurisdiction must be interested in and affected adversely by the decision of the state court sustaining the act, and the interest must be of a personal and not of an official nature."

See also:

Frothingham v. Mellon, 262 U.S. 447, 67 L. ed. 1078, 43 S. Ct. 597.

where, in holding that neither the State of Massachusetts, acting on behalf of its citizens, nor a taxpayer, had a standing in this Court, it is stated, p. 480 (p. 1082, L. ed.):

> "We have reached the conclusion that the cases must be disposed of for want of jurisdiction without considering the merits of the constitutional questions.
>
> "In the first case, the state of Massachusetts presents no justiciable controversy either in its own behalf or as the representative of its citizens. The appellant in the second suit has no such in-

terest in the subject-matter, nor is any such injury inflicted or threatened, as will enable her to sue."

and again at p. 484 (p. 1084, L. ed.) this Court quoted the following language with approval:

"'It is only where the rights of persons or property are involved, and when such rights can be presented under some judicial form of proceedings, that courts of justice can interpose relief.

"'This court can have no right to pronounce an abstract opinion upon the constitutionality of a state law. Such law must be brought into actual or threatened operation, upon rights properly falling under judicial cognizance, or a remedy is not to be had here.'

* * * * * * * * * * *

"It follows that in so far as the case depends upon the assertion of a right on the part of the state to sue in its own behalf we are without jurisdiction. In that aspect of the case we are called upon to adjudicate, not rights of persons or property, not rights of dominion over physical domain, not quasi sovereign rights actually invaded or threatened, but abstract questions of political power, of sovereignty, of government."

In *Tyler v. Judges of Court of Registration*, 179 U.S. 405, 45 L. ed. 252, 21 S. Ct. 206, this Court said:

"Other persons, whether residents or non-residents, whose rights might be injuriously affected by the decision, might lawfully complain of the unconstitutionality of an act which would deprive them of their property without notice; but it is difficult to see how the petitioner would be affected by it. * * *

> "It is true that his competency to institute these proceedings does not seem to have been questioned by the Supreme Court of Massachusetts. It may well have been thought that to avoid the necessity and expense of appearing before an unconstitutional court and defending his rights there, he had sufficient interest to attack the law, which lay at the foundation of its proposed action; but to give him a *status* in this court he is bound under his petition to show, either that he has been, or is likely to be, deprived of his property without due process of law, in violation of the Fourteenth Amendment; and as no such showing has been made, we cannot assume to decide the general question whether the Commonwealth has established a court whose jurisdiction may, as to some other person, amount to a deprivation of property."

Thus, the mere fact that the State Court permitted intervention is not binding upon this Court. The facts and records must determine the Petitioner's status in this Court.

> *Tyler v. Judges of Court of Registration, supra.*

Petitioner, Washington Pension Union, has no *legal* interest in this controversy.

In *Lampasa v. Bell*, 180 U.S. 276, 45 L. ed. 527, 21 S. Ct. 368, it is said (pp. 283 and 284):

> "We said in *Clark v. Kansas City*, 176 U.S. 114 (quoting from Cooley's Constitutional Limitations, section 196), that '"a court will not listen to an objection made to the constitutionality of an act by a party whose rights it does not affect, and who has therefore no interest in de-

> feating it'." That is, a legal interest in defeating it. The objection of unconstitutionality of a statute must be made by one having the right to make it, not by a stranger to its grievance. 'To this extent only is it necessary to go, in order to secure and protect the rights of all persons, against the unwarranted exercise of legislative power, and to this extent only, therefore, are courts of justice called on to interpose.' (Citation)."
>
> *Smith v. Indiana*, 191 U.S. 138, 48 L. ed. 125, 24 S. Ct. 51.

A case squarely in point is *Boston Towboat Co. v. U.S.*, 321 U.S. 632, 88 L. ed. 975, 64 S. Ct. 776, where intervention was granted in the lower court to a party who was interested in the decision in the proceedings for the reason that the same would be a precedent in matters of a similar nature in which Intervener was involved. It was held that the Intervener did not have the right or capacity to separately appeal to this Court. This Court stated, p. 633 (p. 977 L. ed.):

> "We are of opinion that Boston's interest in the outcome of the Cornell litigation is insufficient to entitle it to take a separate appeal (Citing statutes). Whether Boston had sufficient interest to intervene as of right before the Commission and in the District Court we need not decide, the issue here being only whether Boston has such an 'independent right which is violated' by the decision against Cornell as will support an independent appeal." (Citing cases).

Petitioner here is not even a taxpayer, and even if it were would have no standing. This is true under Federal rulings, *Frothingham v. Mellon, supra*, and

under the decisions of the Supreme Court of the State of Washington, the latest of which discussing the matter is *Reiter v. Wallgren*, 28 Wn.(2d) 872, 184 P.(2d) 571.

The petition in intervention in the State Court itself was demurrable under state court practice on the ground that it stated no cause of action and that petitioner had no capacity to sue. Vol. 2, Rem. Rev. Stat., Sec. 259 (See Appendix "C" hereto).

No federal question was involved in the state court's decision. The case and the decision turned entirely on local questions relating to the powers of the Legislature under the State Constitution and the presence or absence of a legal appropriation of state funds under the limitations of the State Constitution. The Supreme Court, after passing upon local problems, merely stated "No other questions of substantial merit are presented." (R. 85). No right of the Intervener was discussed or passed upon or determined in any way.

No stronger statement excluding the idea that Intervener's rights were passed upon could properly be made than the foregoing quotation. It was not necessary for the Supreme Court of the State of Washington to pass upon any federal question, as none exists in this case. Certainly a propaganda or lobbying organization which is not even a taxpayer should not be permitted to interfere with the activities of the State Legislature and with the expenditure of State funds in payment of its employees.

Another reason exists which makes any review in

this litigation unnecessary and highly improper. The sole and only question to be ultimately decided in the pending litigation is whether or not the relator is entitled to recover upon a certain State warrant. The warrant has been paid in full (see affidavit of Dana T. Robinson appended hereto as Appendix "A"). The only purpose of the action was to compel payment of the warrant issued to Mr. Robinson. Thus the entire subject matter of the controversy has been extinguished. This court has nothing left upon which its judgment can operate. In such a situation this court has many times, and without exception, refused to review the decision of a State Court.

In *Little v. Bowers*, 134 U.S. 547, 33 L. ed. 1016, 10 S. Ct. 620, a test case involving certain taxes was dismissed upon a showing that the taxes in question had been paid. In the opinion, Your Honors, stated, p. 556:

> "It is true that the judgment of the court below stands unsatisfied except so far as relates to the costs, which, as before stated, have been paid; but that is immaterial, inasmuch as the controversy upon which that judgment was rendered had been extinguished. That in effect satisfied the judgment. Neither the affirmance nor the reversal of that judgment would make any difference as regards that controversy brought here by this writ of error. It matters not that the taxes from 1884 to 1887, inclusive, were paid under duress. They are in nowise before the court; and according to the showing of the plaintiff in error they differ materially from the taxes in dispute in this case.
>
> "It is well settled, that when there is no actual

controversy, involving real and substantial rights, between the parties to the record, the case will be dismissed."

and, again, on p. 558:

"If, as is contended on behalf of the plaintiff in error, the question involved in this case is one of great importance to the railroad company and to the State, and is identical with that in a number of other cases pending in the court below, so much the more important is it that it should not be decided in a case where there is nothing in dispute."

See also:

Kimball v. Kimball, 174 U.S. 158, 43 L. ed. 932, 19 S. Ct. 639;

Tennessee v. Condon, 189 U.S. 64, 47 L. ed. 709, 23 S. Ct. 579;

American Book Co. v. Kansas, 193 U.S. 49, 48 L. ed. 613, 24 S. Ct. 394.

In the latter case (at p. 51) the court stated:

"It is also urged that another suit has been brought by the same law officer of the State in the name of the State, in the District Court of Shawnee County, which suit is pending in the Supreme Court on appeal from the ruling of the District Court denying a temporary injunction, and that it is contended by the State the judgment of the Supreme Court in the case at bar was an adjudication of a non-compliance of plaintiff in error with the statutes of the State. And it is alleged, that the same defenses were made as in the case at bar. It is hence contended that 'there still exists a controversy, undetermined and unsettled,' involving the right of the

State to enforce the statute against a corporation engaged in interstate commerce.

"The motion to dismiss must be granted. We said in *Mills v. Green*, 109 U.S. 651:

" 'The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that, when pending an appeal from the judgment of a lower court and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment but will dismiss the appeal. And such a fact, when not appearing on the record, may be provided by extrinsic evidence.' * * *

"The case at bar is certainly within the principle. The judgment has been complied with. * * * After compliance there is nothing to litigate."

See:

Security Life Ins. Co. v. Prewitt, 200 U.S. 446, 50 L. ed. 545, 26 S. Ct. 314;

Mills v. Green, 159 U.S. 651, 40 L. ed. 293, 16 S. Ct. 132;

Jones v. Montague, 194 U.S. 147, 48 L. ed. 913, 24 S. Ct. 611;

California v. San Pablo, etc. Ry., 149 U.S. 308, 37 L. ed. 747, 13 S. Ct. 876;

Lord v. Veazie, 8 Howard 251, 49 U.S. 251, 12 L. ed. 1067.

The fact that the case has become moot can be proved by extrinsic evidence.

Kimball v. Kimball, supra;

Jones v. Montague, supra;

Lord v. Veazie, supra.

Regardless of any other question in the case, the foregoing authorities require the denial of the petition for a writ of certiarari. Further, a review of the record presented in this case will readily disclose that no rights of any kind of the Petitioner have been invaded, properly or otherwise.

Legislatures must make inquiries at times in order to act intelligently. The right of legislatures to make such inquiries has been upheld at all times. See *U.S. v. Josephson*, 165 F.2d 82 (Cert. den. 92 L. ed. Adv. Op. 425, Rehearing Den. 92 L. ed. Adv. Op. 630). Petitioner has not been required to do or refrain from doing a single act. There is pending an action in which it seeks redress for its imaginary wrongs and it is free to pursue any remedy it may find open and available. In the meantime, Petitioner should not be permitted, under the guise of freedom of speech, to interfere with the same right on the part of others, particularly in litigation in which it has not the remotest legal interest.

CONCLUSION

It is respectfully submitted that the application for a writ of certiorari should be denied.

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APPENDIX "A"

REMINGTON'S REVISED STATUTES OF WASHINGTON, 1941 Supplement, Section 11034-3, being Chapter 50 of the Session Laws of the State of Washington, 1941, Section 1 provides as follows:

"Additional powers and duties—Employment of attorneys and clerks—Compensation. In addition to the powers and duties now given the Attorney General of the State of Washington by law, he shall also have the power, and it shall be his duty, to represent the State of Washington and all officials, departments, boards, commissions and agencies of the State of Washington in the courts and before all administrative tribunals or bodies of any nature in all legal or quasi legal matters, hearings or proceedings, and to advise all officials, departments, boards, commissions or agencies of the State of Washington in all matters involving legal or quasi legal questions, except where it is otherwise provided by law to be the duty of the Prosecuting Attorney of any county; and it shall be the duty of the Attorney General of the State of Washington, and he shall have the power, to employ or discharge sufficient attorneys and clerk to transact for the State of Washington, its departments, officials, boards, commissions and agencies, all business of a legal or quasi legal nature, except where it is provided by law to be the duty of the judge of any court, or the Prosecuting Attorney of any county, and the Attorney General shall fix the salary and compensation for all such attorneys and employeeys, and in the event such attorneys or employees are assigned to any department, board or

commission, such department, board or commission shall pay the salary or compensation of such persons, as fixed by the Attorney General, not exceeding the funds made available to the department be law for legal services."

APPENDIX "B"

SUPREME COURT OF THE UNITED STATES

October Term, 1948

WASHINGTON PENSION UNION, *Petitioner,* vs. THE STATE OF WASHINGTON, on the Relation of DANA T. ROBINSON, *Respondent.*	No. 221

AFFIDAVIT OF DANA T. ROBINSON

State of Washington, } ss.
County of King }

DANA T. ROBINSON, being first duly sworn, on oath deposes and says:

That he is the Relator and Respondent in the above entitled cause now pending in the Supreme Court of the United States. That he is and was the Relator in that certain cause in the Supreme Court of the State of Washington, being cause No. 30523 of the files and records of said court and entitled THE STATE OF WASHINGTON ON THE RELATION OF DANA T. ROBINSON, RELATOR, v. RUSSELL H. FLUENT, STATE TREASURER, RESPONDENT, WASHINGTON PENSION UNION, INTERVENER.

That the foregoing action in the Supreme Court of the State of Washington was commenced for the pur-

pose of securing a Writ of Mandate to compel the State Treasurer to pay a warrant drawn by the State Auditor on the State Treasurer in payment of compensation of this Affiant for services rendered to the Joint Legislative Fact Finding Committee on Un-American Activities created by House Concurrent Resolution No. 10 of the 1947 Legislature of the State of Washington. That said warrant payable to the affiant was General Fund Payroll warrant of the State of Washington No. 285369 and was in the sum of $291.43. That a copy of said warrant appears in the printed transcript of record filed in the Supreme Court of the State of Washington in Cause No. 221 of files and records of the October Term, 1948, of said court at page 8A. That in said cause in the Supreme Court of the State of Washington, a Decision was had and a Writ of Mandate issued on March 19, 1948, commanding and directing the Respondent Russell H. Fluent, Treasurer of the State of Washington, to forthwith pay said warrant. That pursuant to said Writ of Mandate issued in said court and cause and in compliance therewith, the said Russell H. Fluent, Treasurer of the State of Washington on or about the 20th day of March, 1948, did pay said warrant in ful land did deliver to affiant the sum of $291.43.

That by reason of the foregoing, said warrant, which was the subject matter of the controversy in the proceeding of the Supreme Court of the State of Washington above mentioned, has been paid in full and extinguished, and there is now no controversy remaining, nor does affiant claim any further rights against the State of Washington or the Treasurer

thereof by virtue of those matters and things set forth in the pleadings in said action in the Supreme Court of the State of Washington.

Dana T. Robinson

DANA T. ROBINSON

SUBSCRIBED AND SWORN to before me this 15th day of September, 1948.

Monroe Watt

MONROE WATT

Notary Public in and for the State of Washington, residing at Seattle.

APPENDIX "C"

Volume 2, REMINGTON'S REVISED STATUTES OF WASHINGTON, Section 259, provides as follows:

"The defendant may demur to the complaint when it shall appear upon the face thereof either,

1. That the court has no jurisdiction of the person of the defendant or of the subject matter of the action;

2. That the plaintiff has no legal capacity to sue; or

3. That there is another action pending between the same parties for the same cause; or

4. That there is a defect of the parties, plaintiff or defendant; or

5. That several causes of action have been improperly united;

6. That the complaint does not state facts sufficient to constitute a cause of action;

7. That the action has not been commenced within the time limited by law."